

From: [Barbara Nann](#)
To: [Axe, Al](#)
Cc: [Jessica Hernandez](#); [Anne Foster](#); ['Inglin, Sonja A.'](#); ['Cermak, John F.'](#)
Subject: RE: San Jacinto River Fleet
Date: 09/30/2011 05:00 PM

Al,

You seem to be avoiding the issue at hand. EPA has requested the survey (metes and bounds) of the western waste pit of which work has occurred for the removal and RI/FS. This issue of whether respondents have all the proper access agreements in place has not been resolved. Your client was the first one to raise the issue with EPA about the potential that the western waste pit is not completely located with the McGinnes tract. Note: I am speaking about the portion of waste pit that is above water. EPA has requested a survey from your client on more than one occasion and all you have provided is the survey for San Jacinto Fleet which is not what we requested. What EPA is asking for is the metes and bounds of the western waste pit along with the overlay of survey of the McGinnes to indicate that respondents have access from all the proper parties for the waste pits (specifically those portions above the tide line). I thank you for your prompt attention to this matter.

Barbara A. Nann
Assistant Regional Counsel
EPA Region 6 (6RC-S)
1445 Ross Avenue
Dallas, TX 75202
phone: (214) 665-2157
fax: (214) 665-6460
nann.barbara@epa.gov

-----"Axe, Al" <aaxe@winstead.com> wrote: -----

=====

To: Jessica Hernandez/R6/USEPA/US@EPA
From: "Axe, Al" <aaxe@winstead.com>
Date: 09/30/2011 03:52PM
Cc: Barbara Nann/R6/USEPA/US@EPA, Anne Foster/R6/USEPA/US@EPA, "'Inglin, Sonja A.'" <singlin@bakerlaw.com>, "'Cermak, John F.'" <jcermak@bakerlaw.com>
Subject: RE: San Jacinto River Fleet
=====

Jessica, Barbara, and Anne,
On behalf of MIMC, attached please find a copy of a survey recently received by Respondents from San Jacinto River Fleet, L.L.C. (SJRF). This survey was obtained by SJRF in conjunction with its purchase of the property owned by Big Star Barge & Boat Company, Inc (Big Star) located in the vicinity of or within the San Jacinto River Waste Pits Superfund Site (Site). The survey was performed by a Licensed State Land Surveyor (LSLS), a surveyor qualified to demarcate the continuing ownership of land that has been inundated by the San Jacinto River. The survey shows the property, formerly owned by Big Star, that remains above the line of mean high water. This constitutes a total of 21.462 acres. Property below the line of mean high water was no longer owned by Big Star at the time of the sale to SJRF. The attached survey also shows the Virgil C. McGinnes, Trustee tract of land.

Based on this survey, neither Big Star nor SJRF owns property on the western boundary of the western cell of the Site. The portion of the Site that has been inundated is now apparently owned by the Port of Houston Authority (POHA).

Respondents have previously provided EPA Region 6 copies of consents to access provided by the POHA. Respondents have also previously addressed access to the Virgil C. McGinnes, Trustee tract. Please let us know if you need additional copies of those consents to access.

The Respondents appreciate the 14 day extension granted in the attached email. At this time, Respondents are not aware of any upcoming work that is scheduled for the SJRF property; thus, the urgency indicated by the short deadlines is not readily apparent (and we are not clear about the appropriateness of EPA's directive under the UAO or AOC, but that can be addressed separately later should that be necessary). Based on your upcoming meeting with SJRF, we will hopefully have a better understanding of any concerns that SJRF may have with access and be able to address those concerns in a timely manner. We request that you consider that this may be best accomplished without a short deadline that places undue pressure on the relevant parties.

Please let us know if you have any questions. Thanks. Al

Albert R. Axe, Jr.
Direct: (512) 370-2806
Fax: (512) 370-2850
profile link: <http://www.winstead.com/Attorneys/aaxe>

From: Hernandez.Jessica@epamail.epa.gov [mailto:Hernandez.Jessica@epamail.epa.gov]
Sent: Wednesday, September 28, 2011 10:23 AM
To: Axe, Al
Cc: Nann.Barbara@epamail.epa.gov; Foster.Anne@epamail.epa.gov
Subject: Re: San Jacinto River Fleet

Al-

Thank you for your note. At this point our primary concern is that Respondents provide documentation regarding the metes and bounds of the western waste pit north of I-10 bridge. Respondents should have already in their possession documentation that demonstrates that Respondents have secured access from all the parties who may have a potential ownership interest in the western portion of the western waste pit. This information is required to be secured under both the Administrative Order on Consent for Removal and the Unilateral Administrative Order on Consent for Remedial Investigation and Feasibility Study. Moreover, under both agreements, Respondents are required to provide documentation regarding their work under these agreements when requested by EPA. To that end, on September 21, 2011, EPA requested (in an email from Barbara Nann) that Respondents provide the following:

- (1) survey of the parcel western waste pit
- (2) signed access agreements from the appropriate parties



9549121

With regards to securing access agreements with San Jacinto River Fleet, EPA is willing to grant Respondents an extension of 14 days to allow San Jacinto River Fleet to meet with EPA and have their questions answered before they negotiate an access agreement with you. However, we did not interpret your request for an extension to apply to EPA's request for documentation. Accordingly, it remains our expectation that those documents be provided by October 5, 2011.

Please let me know if you have additional questions or need further clarification regarding our request. I will be in meetings most of the day, but will be checking my email every couple of hours.

Many thanks.

Jessica

Jessica Hernandez
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733
Tel. (214) 665-8384
Fax (214) 665-6460

IRS Circular 230 Required Notice--IRS regulations require that we inform you as follows: Any U.S. federal tax advice contained in this communication (including any attachments) is not intended to be used and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or tax-related matter[s].

Information contained in this transmission is attorney privileged and confidential. It is intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone.

[attachment(s) "Alta Page 1 of 3 San Jacinto River Fleet.pdf", "ALTA Sheet 2 of 3 SanJacintoRiverFleet.pdf", "ALTA Sheet 3 of 3 SanJacintoRiverFleet.pdf" removed by Barbara Nann/R6/USEPA/US]